

REMARKS

In the Office Action, claims 20-21 and 31 are rejected under 35 U.S.C. §112, second paragraph; claims 7-12, 18, 20, 25, 27, 28 and 30-33 are rejected under 35 U.S.C. §102; claims 1-6, 13-17, 19, 21-24, 26 and 29 are rejected under 35 U.S.C. §103; and claims 1-33 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting. Claims 7, 18, 20, 21, 25, 28 and 31 have been amended. Applicants believe that the rejections have been overcome in view of the amendments and for the reasons set forth below.

In the Office Action, claims 20-21 and 31 have been rejected under 35 U.S.C. §112, second paragraph. In response, claims 20, 21 and 31 have been amended. Applicants note for the record that the amendments in response to this rejection were made for clarification purposes and not intended to narrow and/or disclaim any claimed subject matter in view of same.

Therefore, Applicants believe that claims 20, 21 and 31 satisfy the requirements pursuant to 35 U.S.C. §112, second paragraph. Accordingly, Applicants respectfully request that this rejection be withdrawn.

In the Office Action, claim 1-33 are rejected under 35 U.S.C. §102 or §103. More specifically, claims 7-12, 18, 20, 25, 27, 28 and 30-33 are rejected as anticipated in view of EP0645095 (“Collings”); and claims 1-6, 13-17, 19, 21-24, 26 and 29 are rejected as rendered obvious in view of Collings and U.S. Patent No. 5,431,297 (“Hand”). Applicants believe that the anticipation and obviousness rejections have been overcome and/or are improper as detailed below.

With respect to the anticipation rejection, claims 7-12, 18, 20, 25, 27, 28 and 30-33 have been rejected in view of Collings as previously discussed. Claims 7, 18, 20, 25, 28 and 31 are the sole independent claims. Claim 7 recites a dried pet food that includes a matrix including a protein source, a carbohydrate source, an insoluble fiber wherein the dried pet food has an unstriated appearance, and a density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³ and the dried pet food has a thickness of at least 12 mm and a length that is greater than the thickness. Claim 18 recites a dried pet food comprising at least 25% by weight of a kibble having an unstriated appearance and comprising a matrix having a protein source, carbohydrate source, insoluble fiber, and a density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³, wherein the dried pet food has a thickness of at least 12 mm and a length that is greater than the thickness.

Claim 20 recites a method of reducing calculus and plaque build-up on a pet's teeth. The method includes, in part, feeding a dried pet food to a pet that includes, in part, an unstriated appearance and a density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³, wherein the dried pet food comprises a thickness of at least 12 mm and a length that is greater than the thickness.

Claim 25 recites a method for making a dry pet food. The method includes, in part, creating a dry pet food that has an unstriated appearance, a density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³, wherein the dry pet food includes a thickness of at least 12 mm and a length that is greater than the thickness. Claim 28 recites a dried pet food that includes a protein source, a carbohydrate source, an insoluble fiber source and having an inner cellular structure that is created by a non-laminar flow extrusion process wherein the dried pet food has a density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³, and wherein the dried pet food includes a thickness of at least 12 mm and a length that is greater than the thickness. Claim 31 recites a dried pet food that includes, in part, an inner cellular structure with a number of microscopic air pockets wherein the dried pet food has a density that ranges from 16.8 lbs/ft³ to about 20 lbs/ft³, a thickness of at least 12 mm, and a length that is greater than the thickness.

The present invention provides a dry pet food that can reduce tarter when chewed by the pet. Applicants have discovered that by reducing the density and increasing the size of the pet food product that the resultant product can remove more plaque and tartar build-up than similar pet food products. See, Specification, page 3, lines 4-7. In this regard, the characteristics of the dry pet food as claimed, such as a density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³ in addition to the specific dimensional characteristics as further defined in claims 7, 18, 20, 25, 28 and 31, allows the pet food to have a desirable texture such that it can be penetrated at a distance of at least about 30% of the thickness prior to breaking. See, Specification, page 5, lines 19-24. Indeed, Applicants have provided examples that illustrate the beneficial effects of the claimed invention. See, Specification, Examples 1-5.

In contrast, Applicants believe the Collings reference is distinguishable from the specific characteristics of the dried pet food as claimed. For example, nowhere does Collings disclose or suggest the combination of specific density and dimensional characteristics as defined in claims 7, 18, 20, 25, 28 and 31 as discussed above. Again, the specific characteristics of the dried pet food as claimed allow effective penetration of the dried pet food when chewed such that tartar and plaque build-up can be effectively removed. As further illustrated in the specification, this

provides a texture such that a probe, having a contact area of about 1 mm² and operated at a speed of about 5 mm/s, can penetrate into the pet food for a distance of at least 30% of the thickness of the matrix prior to breaking. See, Specification, page 5, lines 19-22. Moreover, Applicants have provided a number of examples that demonstrate the beneficial dental effects of the dried pet food and claimed as previously discussed.

Indeed, the primary focus of Collings relates to an extruded dog food product that has improved resistance to breakage upon shipping and handling. See, Collings, p.2, lines 5-6. Clearly, this suggests that Collings fails to recognize any improved dental cleaning properties from the pet food disclosed therein, let alone, such properties that are due, at least in part, to specific characteristics of the pet food, such as the combination of density and dimensional characteristics as claimed and discussed above. Again, Applicants have discovered that by reducing the density and increasing the size of the pet food product that the product can effectively remove more plaque and tarter build-up. Based on at least these reasons, Applicants believe one skilled in the art would consider that Collings is distinguishable from the claimed invention. Therefore, Applicants respectfully submit that the anticipation rejection in view of Collings should be withdrawn.

With respect to the obviousness rejection, the Patent Office relies primarily on Collings and further relies on Hand to remedy the deficiencies of Collings. Applicants believe that this rejection is improper.

As previously discussed, Applicants believe that Collings is deficient with respect to the specific characteristics of the dried pet food as claimed, such as the combination of specific dimensional and density characteristics. The dimensional characteristics have been further defined in claims 1, 13, 19, 22 and 26 to provide that the dried pet food includes a length of at least 15 mm, a width of at least 13.5 mm and a thickness of at least 12 mm with the length greater than the thickness and with a density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³. Thus, on its own, clearly Collings is distinguishable from the claimed invention.

Further, Applicants do not believe that the Patent Office can rely solely on Hand to remedy the deficiencies of Collings. Indeed, the Patent Office primarily relies on Hand for its purported teachings regarding dimensional properties of a pet food. See, Office Action dated July 30, 2003, pages 4 and 5. Thus, nowhere does Collings and Hand disclose or suggest that the specific combination of density and dimensional characteristics as claimed can effectively

remove tarter and plaque build-up as Applicants have discovered. What the Patent Office has done is to rely on hindsight reasoning in support of the obviousness rejection. Indeed, the Patent Office even admits that Hand and Collings relate to different types of pet foods. See, Office Action, page 4. Why then would one skilled in the art be inclined to combine or modify the alleged teachings of same to arrive at the claimed invention? Again, Applicants have conducted and provided a number of examples that illustrate the beneficial properties of the dried pet food as claimed.

Accordingly, Applicants respectfully request that the anticipation and obviousness rejections be withdrawn.

In the Office Action, claims 1-33 have been provisionally rejected under the obviousness-type double patenting doctrine. More specifically, claims 1-33 have been rejected in view of claims 1-24 of copending U.S. Patent Application No. 09/154,646; in view of claims 1-32 of copending U.S. Patent Application No. 10/052,949; and in view of claims 1-20 of copending U.S. Patent Application No. 09/936,672. As these rejections are provisional, Applicants respectfully submit that they plan to file a Terminal Disclaimer, if necessary, to address the obviousness-type double patenting rejections, if and when, any one or combination thereof of the copending U.S. Patent Applications as discussed above have in fact been patented. Therefore, Applicants believe that they have been responsive to the provisional rejections at least at this stage in the examination of the above-referenced patent application.

For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicit reconsideration of same.

Respectfully submitted,

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